

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

— — —

IN RE:	:	MDL-07-1871
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AVANDIA MARKETING,	:	
SALES PRACTICES AND	:	Philadelphia, Pennsylvania
PRODUCTS LIABILITY	:	March 26, 2014
LITIGATION	:	12:32 a.m.

— — —

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CYNTHIA M. RUFÉ
UNITED STATES DISTRICT JUDGE

— — —

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Respondent's Opening Statement

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1 conditions of the MDL from the standpoint of what the
2 people got, et cetera. I personally negotiated the
3 settlement. I criss-crossed the country five times, had
4 specific meetings with respect to the settlement.

5 And quite frankly, Your Honor, I believe the
6 evidence is we got four times as much money for heart
7 attacks as the MDL, because of the preparation and work
8 that we did, along with investing \$14 million of the
9 firm's own money for the proper cost of preparing the
10 case.

11 THE COURT: Well, as I understand it ---

12 MR. GIRARDI: Now --

13 THE COURT: -- Mr. Girardi, as I understand
14 the process over the last seven years in this MDL, the
15 PSC did not direct any particular firm's settlement
16 agreements, did not intervene or interfere even when
17 requested in other firms' negotiations with GSK. So
18 you're not in any different position than any other one
19 of them who had their firms and their firms' cases
20 settled with GSK.

21 Those are separate. So I just want to clarify
22 here that that will never be a ground in this proceeding
23 upon which you can prevail.

24 So why don't you go back to whether or not you
25 used the material and the discovery that was amassed in

1 Number 1871, is admitted into evidence.)

2 MR. ZONIES: Thank you, Your Honor.

3 BY MR. ZONIES:

4 Q Mr. Andrus, what's the date of the order appointing
5 Mr. Sizemore of the Girardi Keese firm to the PSC?

6 A The date was April 9th, 2008.

7 Q Prior to that appointment to the PSC, Mr. Andrus,
8 did indeed the PSC, who ultimately became the PSC
9 members, perform any work to further the Avandia
10 litigation prior to this appointment?

11 A They did. If I may explain, in May of 2007, the
12 Nissen article which first discussed the relationship
13 between Avandia and an increased risk of heart attacks
14 was published.

15 A substantial number of attorneys self-
16 organized under the leadership of myself and Mr.
17 Aylstock, and that included Mr. Sizemore, our working
18 group worked independently of but also directly with GSK
19 prior to the creation of the MDL by the JPML, subsequent
20 to the creation and actually negotiated with GSK certain
21 terms involving, for example, plaintiff fact sheets,
22 prior to the date of this order.

23 So we started working in approximately July or
24 August of 2007.

25 Q And during the period of time where there was work

1 right?

2 A Yes, sir, on the left-hand side in the middle of the
3 column.

4 Q Would it have been your habit and practice in your
5 business then to have forwarded this to Girardi Keese to
6 see if they had objection to their being listed as
7 someone who was obligated to pay the assessment on their
8 cases?

9 A Yes, sir.

10 Q Do you believe you did so?

11 A I know I did so.

12 Q Did you ever receive any objection from Mr. Girardi?

13 A No.

14 Q Until recently?

15 A Not until these proceedings.

16 MR. ZONIES: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. ZONIES:

19 Q Mr. Andrus, I've handed you what's been marked as
20 Exhibit 4. Could you describe that document, please?

21 A Exhibit 4 is another letter, virtually identical to
22 Exhibit 3. Exhibit 3 was dated August 31st, 2009.

23 Exhibit 4 is yet another letter I sent to GSK, care of
24 Ms. Gussack, dated September 21st, 2009, to -- I mean,
25 it may be -- yes, it's exactly the same, and it has a

Mr. Andrus - Direct

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1 different Exhibit A because it may have additional or
2 different PSC members or counsel that we think their
3 cases were covered.

4 Q And is Girardi Keese listed indeed on Exhibit A for
5 that document, that letter as well?

6 A Let me look. Yes. And you can see Exhibit A on
7 Number -- Exhibit Number 4 is laid out differently -- in
8 a different manner column-wise than Exhibit 3, but, yes,
9 they are listed.

10 Q And to your knowledge, did you ever receive any
11 notice or objection from Mr. Girardi or the Girardi
12 Keese firm about whether or not they believed they owed
13 the assessment at that time?

14 A I did not receive any such objection.

15 Q And, Mr. Andrus, because you didn't receive any
16 objection, did the PSC continue to share information to
17 your knowledge with the Girardi Keese firm?

18 A Indeed they did, both before and after Mr. Sizemore
19 departed. While Mr. Sizemore was an employee of Girardi
20 Keese, he was Chair of our Science Committee. He was
21 our head science guy at that time and was involved in
22 all discovery at -- and had access to all documents and
23 all work product.

24 MR. ZONIES: May I approach, Your Honor?

25 THE COURT: Yes.

1 date. So they're being suspended pursuant to a Master
2 Settlement Agreement Girardi Keese entered into with
3 GSK.

4 Q And do you see the numbers on some of these cases,
5 2:08 --

6 A Yes.

7 Q -- 2:11 or 11. What do you understand those 08 and
8 11 to mean?

9 A The Court allocates docket numbers by the date on
10 which they were filed, and so those cases were filed in
11 2008 through 2011. That's my understanding of the
12 Court's numbering system.

13 Q And then it's signed on the second page, the
14 stipulation and order to place in administrative
15 suspense, is that right?

16 A That -- yes.

17 Q And what's the -- what is the -- is the Girardi
18 Keese firm listed on that signature block?

19 A It is.

20 Q And what's the date of that signature of either Mr.
21 Girardi or Mr. Griffin in this stipulation filed in this
22 MDL for the 20-plus cases that were active in this MDL
23 from 2008 through 2011 while these PSC members were
24 working?

25 A It's 10-4-12, October 4th, 1912 -- I mean, 2012.

1 MR. GIRARDI: Well, I'll object -- I'll object
2 to that. He's answered the question.

3 THE COURT: Well, actually, you did ask him to
4 answer the question, and he's explaining his answer.
5 Overruled. You may answer, Mr. Andrus.

6 MR. GIRARDI: Okay.

7 THE WITNESS: The reason for that, Your Honor,
8 is the bell -- just as the bell can't be unrung, once
9 one shares common benefit -- a common benefit work
10 product with another, the other then knows and
11 understands. I disagree with Mr. Girardi that he didn't
12 use our stuff because I think he did and I think our
13 evidence can demonstrate that.

14 But the point is that Mr. Girardi himself, Mr.
15 Griffin himself, attended strategy conferences in which
16 there was a full explication of all the trial strategy,
17 tactics, documents. They were provided copies of all of
18 our documents, and that enures to the benefit of every
19 client that he has, not only those in 2008 or 2009, but
20 every one to the very last one. And that, Mr. Girardi,
21 is why I respectfully disagree with your interpretation.

22 BY MR. GIRARDI:

23 Q Well, sir, the document says, by its terms, and the
24 only document that you have a signature on of Keith
25 Griffin says that -- it provides that there is an

1 and because of Pretrial Order Number 10.

2 I -- I'm sorry, Your Honor. I don't want to
3 debate with Mr. Girardi about that. We just have a
4 disagreement about what it means.

5 BY MR. GIRARDI:

6 Q The \$200,000 that apparently Sizemore was entitled
7 to, was never paid to our firm, isn't that correct?

8 A That's incorrect. Your firm rejected the payment.
9 Your firm submitted common benefit time, at least
10 through the time that Mr. Sizemore left. That time,
11 ultimately, was adjudicated and was subject to an order
12 of this Court, awarding your firm a common benefit fee
13 of \$200,000, the check for which you did return and said
14 words to the effect, we don't want this or this -- this
15 isn't ours or please, keep this money. And you sent the
16 money back.

17 Q And then, your common benefit fees were -- amounted
18 to \$17,150,000?

19 A I -- well, I don't --

20 Q Did they or not?

21 A No, I -- I don't recall it being that big, and I
22 wish it was. I don't recall it being that big a number,
23 but the award -- no, I don't think my award was that
24 amount. I think it was less than that. I think it was
25 still much larger than the one you're talking about, and

1 it's contingent in part on the ultimate collections,
2 which the Common Benefit Assessment Fee Fund acquires.
3 So the answer is, no, I haven't been paid \$17 million.

4 Q Did you put out 14 million in costs in the case?

5 A Well, I don't know. Did you -- our Plaintiffs'
6 Steering Committee, I believe --

7 Q No, sir, you.

8 A Me, personally? No.

9 Q Yes.

10 A No.

11 MR. GIRARDI: I have nothing further, Your
12 Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. ZONIES: Just one question, Your Honor.
15 I've made the mistake of saying that.

16 REDIRECT EXAMINATION

17 BY MR. ZONIES:

18 Q Mr. Andrus, to your knowledge, does the allocated
19 amount for the Girardi Keese firm remain in trust,
20 awaiting Girardi Keese's decision to -- whether or not
21 he would like to change his mind?

22 A It does. The fund administrator has placed that
23 money in suspense, and he does -- well, he -- he is
24 simply holding it until there is a resolution by this
25 Court as to whether or not -- I don't know -- as to the

1 disposition of it, whatever that might be.

2 MR. ZONIES: Nothing further for this witness,
3 Your Honor.

4 THE COURT: Anything further, Mr. Girardi, for
5 this witness?

6 MR. GIRARDI: Nothing -- nothing further, Your
7 Honor.

8 THE COURT: Thank you. You may step down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 MR. ZONIES: Your Honor, I call Mr. Justin
12 Kaufman from the Heard Robins law firm.

13 JUSTIN KAUFMAN, PETITIONER'S WITNESS, SWORN.

14 COURTROOM DEPUTY: Please state your full name
15 for the record?

16 THE WITNESS: Justin Kaufman.

17 THE COURT: Would you please spell your last
18 name?

19 THE WITNESS: K-A-U-F-M-A-N.

20 DIRECT EXAMINATION

21 BY MR. ZONIES:

22 Q Good afternoon, Mr. Kaufman.

23 A Good afternoon.

24 Q Could you please describe for the Court what you do
25 and with whom you do it?

1 A Sure. I am a partner with the law firm Heard Robins
2 Cloud. I am out of the Santa Fe, New Mexico office. My
3 partner, Bill Robins, was a member of the Plaintiffs'
4 Steering Committee in the Avandia litigation. Bill and
5 I worked together on the Avandia litigation from 2011,
6 from the time Bill was appointed to the PSC, through the
7 time that we settled our Avandia cases in January of
8 2012.

9 That settlement came about shortly before we
10 were ready to try our first bellwether case in the
11 California JCCP.

12 Q So, you -- Heard Robins and you, personally, worked
13 on cases that were, indeed, in the California JCCP,
14 along with some of Mr. Girardi's cases, is that right?

15 A That's right.

16 Q Were you actively involved in that California
17 litigation?

18 A We were.

19 Q You heard testimony perhaps today from Mr. Girardi,
20 under oath, that he did not use or utilize any of the
21 MDL work product or experts or documents, other than
22 receiving those documents that were generated, and the
23 work done here in the MDL, have you heard that testimony
24 today?

25 A I have.

1 Q Do you agree with that?

2 A I don't.

3 Q Why not?

4 A Starting in the middle of 2011, there were a number
5 of cases that were chosen as trial pool cases in the
6 California JCCP. Our firm represented clients in that
7 trial pool, as did Mr. Girardi's firm. When the cases
8 were chosen as trial picks, all of those cases, and all
9 of those plaintiffs' firms worked together on all of
10 those cases.

11 All of those cases faced summary judgment
12 motions from the defendant, and together, all of the
13 plaintiffs' lawyers worked together to oppose those
14 summary judgment motions. In opposition to those
15 summary judgment motions, all of the plaintiffs' lawyers
16 utilized MDL work product that had been developed since
17 you and Mr. Andrus and Mr. Aylstock and everyone else
18 had begun the MDL shortly in the middle of 2007 and all
19 of the work product that had been developed up until
20 that point.

21 And so when the summary judgment motions came
22 up in California, the pleadings very much relied upon
23 the evidence that was developed by the MDL, and our
24 firms collectively filed pleadings relying upon that
25 work product.

1 Q And by our firms, who do you mean?

2 A The Heard Robins firm, the Girardi firm, as well as
3 other firms that had represented clients in the
4 California JCCP, as well as clients in the MDL.

5 Q And you were personally involved in these
6 litigations in California?

7 A We were, yes.

8 Q Do you know, for example, whether or not the Girardi
9 Keese firm relied upon experts that had been developed
10 completely in the MDL?

11 A Yes. We relied upon a handful of experts, in
12 particular, in order to oppose the summary judgment
13 motions that were filed by GSK. There were three
14 experts who we used to file declarations in California
15 in support of our summary judgment oppositions.

16 Those experts were Dr. Suzanne Parisian, Dr.
17 Elliot Brinton and Dr. Nicholas Jewell. They filed
18 declarations in our cases in California, and we, in
19 opposition to the summary judgment motion, cited and
20 relied upon those declarations in support of our
21 oppositions.

22 Q And Dr. Jewell is a biostatistician, is that right?

23 A He is, yes.

24 Q And Dr. Jewell was the biostatistician that this
25 Court held Daubert hearings on, and he came and he

1 testified. And he was able to get past Daubert
2 challenges in the MDL?

3 A Yes, that's correct.

4 Q The same with Dr. Elliot Brinton?

5 A Yes.

6 Q Dr. Elliot Brinton testified before this Court in
7 the Daubert hearings?

8 A That's right.

9 Q And the same with Dr. Parisian, as well, correct?

10 A Yes.

11 MR. ZONIES: May I approach, Your Honor?

12 THE COURT: You may.

13 (Pause in proceedings.)

14 BY MR. ZONIES:

15 Q Mr. Kaufman, I have handed you what's been marked as
16 Exhibit 6 -- 7?

17 MS. NAST: 7.

18 THE COURT: 7.

19 BY MR. ZONIES:

20 Q Exhibit 7. Do you see that document?

21 A Yes.

22 Q And Exhibit 7, actually, the lead page on it says,
23 Exhibit C, is that right?

24 A Yes.

25 Q And what do you -- can you describe, please, what

1 Exhibit 7 is?

2 A Exhibit 7 is the plaintiffs' exhibit list that was
3 filed in a case captioned Nancy LeVoise (ph) -- I don't
4 know if I'm pronouncing that correctly -- versus GSK.

5 Q And can you describe, please, what that document is?

6 A This is an exhibit list that was filed by the
7 plaintiffs in the LeVoise versus GSK case. It lists
8 some 2,300 or 2,400 documents as exhibits in that case.

9 Q Do you know who counsel was on the LeVoise case?

10 A It was the counsel for the Girardi Keese firm.

11 Q This is the Girardi Keese client in the JCCP?

12 A It's one of their clients, yes.

13 Q And there -- as you pointed out, there are over
14 2,395 exhibits listed on this -- on this exhibit list
15 for that trial, is that right?

16 A Yes.

17 Q And the -- did you have any role in creating this
18 exhibit list?

19 A Yes. This document took some years off of my life.
20 This was an exhibit list that began in the MDL. At the
21 time when the MDL prepared it, it had some 1,000
22 exhibits on it. And in the time that Bill Robins and I
23 were working in the MDL, as well as in California, we
24 added approximately another 1,000 documents to this list
25 in preparation for the California trial settings.

1 Q Okay. And to your knowledge, did Mr. Girardi or his
2 firm have any input into this exhibit list?

3 A This exhibit list was provided to the Girardi firm,
4 as it was prepared by our firm, leading up to our trial.
5 There may be documents on this that Mr. Girardi's firm
6 added to. I don't see them, but for the most part,
7 given the MDL numbers on this document, I know that
8 these are documents from the MDL that we provided in the
9 list itself.

10 Q And when you say, from the MDL numbers on the
11 document, what do you mean?

12 A The documents are listed by Bates number, and the AV
13 MDL Bates numbers are Bates numbers that were applied by
14 GSK when GSK produced the documents to the Plaintiffs'
15 Steering Committee in the Avandia MDL. That's how they
16 designated their documents.

17 Q And do you see any documents on here that say AV-CA-
18 JCCP?

19 A I don't.

20 MR. ZONIES: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. ZONIES:

23 Q Mr. Kaufman, I have handed you --

24 MR. ZONIES: Your Honor, I move for admission
25 of Exhibit 7.

1 THE COURT: Any objection?

2 MR. GIRARDI: We have no objection. No
3 objection.

4 THE COURT: Thank you. It is admitted.

5 (Petitioner's Exhibit 7, trial exhibit list,
6 is admitted into evidence.)

7 BY MR. ZONIES:

8 Q Mr. Kaufman, I have handed you Exhibit 8. Do you
9 have that in front of you?

10 A Yes, I do.

11 Q And what is Exhibit 8? What is your appreciation of
12 what Exhibit 8 represents?

13 A Exhibit 8 is a joint witness list for trial that was
14 filed in the California JCCP, relating to the case,
15 Nancy LeVoise versus SmithKlineBeecham/GlaxoSmithKline.

16 Q And again, what is your understanding of who the
17 counsel is for Ms. LeVoise?

18 A My understanding is that, counsel for Ms. LeVoise
19 was the Girardi Keese firm. And this -- this document,
20 witness lists for trial, has a complaint filed date.
21 What is that date that that was filed in California? Do
22 you see that on the first page, under the caption,
23 Witness Lists for Trial?

24 A The complaint file date is May 19th, 2009.

25 Q Okay. And than what is the trial date?

1 A April 11th, 2012.

2 Q All right. And let's take a look at some of the
3 plaintiffs -- well if you turn to the second page,
4 actually, there is a signature block. Do you see that
5 signature block, the second one down?

6 A Yes.

7 Q And who does it purport to be the signature of on
8 the document?

9 A It looks like Keith Griffin.

10 Q At what law firm?

11 A At Girardi Keese firm.

12 Q And listed as attorneys for the plaintiff in the
13 case?

14 A Yes, Nancy LeVoise.

15 Q Exhibit A is the plaintiff's trial witness list, do
16 you see that?

17 A Yes.

18 Q All right. Now, there are a number of -- in column
19 three, there appear to be, like, time numbers. Do you
20 know what those are?

21 A Yes. Those are the deposition cut times for each of
22 these witnesses, so when we were preparing for trial and
23 did deposition cuts for each of these witnesses, when we
24 were preparing to play their videos during trial, those
25 are the time lengths for those videos.

1 Q Okay. And did you actually participate in the
2 creation of this document and, also, the cutting of
3 those depositions?

4 A Yes.

5 Q And I just want to go through a few of these, if we
6 can, Mr. Kaufman. The first one that says, Susan
7 Abelson, R.N., plaintiff's treating physician, do you
8 see that?

9 A Yes.

10 Q You understand that that's Ms. LeVoise's doctor in
11 the case?

12 A That's my understanding, yes.

13 Q Okay. So I am going to call things like that case
14 specific, and then, if we talk about somebody like
15 Allaster Benbot (ph), that's a GSK employee. Do you see
16 that second one?

17 Yes, and Dr. Benbot was a witness whose
18 deposition I took in the UK. Do you recognize -- do you
19 know if Girardi Keese had any role, whatsoever, in the
20 deposition of Mr. Benbot, that GSK employee?

21 A I don't believe they did, no.

22 Q Okay. So, I'll call things like that, sort of the,
23 general liability witnesses. Does that make sense to
24 you, the distinction?

25 A Yes.

1 Q Okay. So, Joanna Bulsreck (ph), do you know whether
2 the MDL or Mr. Girardi and Girardi Keese took that
3 deposition?

4 A Counsel for the MDL took that deposition.

5 Q Okay. Mr. Cardinale (ph), in particular?

6 A Yes.

7 Q Okay. And these are -- these are plaintiff's trial
8 witnesses, the witnesses that, apparently, Girardi Keese
9 intends to call at his trial in California, correct?

10 A That's my understanding, yes.

11 Q All right. The next GSK employee is David Brand
12 (ph). Do you know if the MDL took that deposition or
13 was it Girardi Keese?

14 A The plaintiffs' lawyers and the MDL took the
15 deposition of David Brand.

16 Q Elliot Brinton, it says, plaintiffs' expert. We
17 discussed Dr. Brinton a little earlier. Do you know if
18 Dr. Brinton was, indeed, found by, worked up and
19 presented by the MDL at a Daubert hearing in the MDL or
20 did Mr. Girardi and Girardi Keese do that?

21 A No. Dr. Brinton's work on this case was worked up
22 through the MDL and was subject to Daubert hearings,
23 here, in this Court, and he survived those hearings.

24 Q And, then, if we look at -- I'll just summarize --
25 Buckingham, Caponie, Carr, all the ones that say GSK

1 employee, Kollitz, Kekettle, Kolier, Rahl, even these
2 third-party witnesses like, Marty Fried, Jeffery Fried,
3 Dr. Garnier, the CEO at one point in time, Dr. Gavin,
4 GSK's expert, Dr. Gibbs, do you know who prepared and
5 took the depositions of all of those people that I just
6 listed? Was it MDL lawyers or was it Mr. Girardi and
7 Girardi Keese?

8 A These would all be MDL lawyers.

9 Q And if we turn to the next page, would that same
10 thing be true for every witness on that next page, other
11 than the case specific witnesses, as far as you know?

12 A That's true. As far as I know, that's true.

13 Q So, Dr. Hefner, David Harrison, Mark Hiese, Dr.
14 Holme, were the MDL -- do you know, whether or not --
15 indeed, you may know this. Do you know whether or not
16 the MDL flew to the UK to take the deposition of Dr.
17 Holme?

18 A I do know that the MDL flew to the UK to take the
19 deposition of Dr. Holme.

20 Q Do you know, did Girardi Keese pay any of the
21 expenses associated with that trip?

22 A I don't know if they did.

23 Q Dr. Jewell is an MDL expert, is that right?

24 A Yes.

25 Q And I could go on through this list. I don't want

1 Q And you had nothing to do with the settlement
2 negotiations of our cases with the defendant, isn't that
3 correct?

4 A That's correct.

5 Q And as a matter of fact, we had our own -- we made
6 our own demands for documents, of which the defendant
7 said, please just get those from the MDL. You know
8 that, don't you?

9 A I didn't know that. I know that our firm made those
10 documents available to you. The MDL documents, we made
11 them available to you and your firm.

12 Q Right. And that is because, the defendant said, we
13 don't want to do this again. We've done it. We
14 appreciate the fact that you're entitled to it, but
15 we've already done it, so please, get a copy of these
16 documents. That's what happened, isn't it?

17 A I don't know that.

18 Q Okay. And, then, of the major witnesses that are
19 going to put the case together, for example, Dr.
20 Maracangus (ph), he was the key guy for the plaintiffs'
21 case, wasn't he?

22 A I'm sorry, could you say that name again?

23 Q Maracangus.

24 A I don't know who that is.

25 Q Okay. And the fact of the matter is, that we've

I N D E XPETITIONER'S OPENING STATEMENTPAGE NUMBER

By Mr. Zonies

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RESPONDENT'S OPENING STATEMENTPAGE NUMBER

By Mr. Girardi

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PETITIONER'S WITNESSESDIRECT CROSS REDIRECT RECROSS

Vance R. Andrus

By Mr. Zonies

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By Mr. Girardi

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Justin Kaufman

By Mr. Zonies

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By Mr. Girardi

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PETITIONER'S EXHIBITSADMITTED INTO EVIDENCE

1 Document 108 from MDL Number 1871

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2 Attorney Participation Agreement

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3 Letter dated 8-31-09 from Vance Andrus

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4 Letter dated 9-21-09 from Vance Andrus

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5 PTO 70 of MDL 1871

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6 Document 2740 of MDL 1871

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7 Trial exhibit list

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8 Joint witness list

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CERTIFICATION

I, Donna M. Anders, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

Date

4/2/14

Donna M. Anders
Donna M. Anders